HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.3563 OF 2007

Between:

S.V.Gopala Krishna

. . .Petitioner

AND

Andhra Pradesh State Human Rights
Commission, Hyderabad and another

. . .Respondents

:: O R D E R ::

Counsel for the petitioner : Shri S.V.Ramana
for Shri O.Manoher Reddy

Counsel for the respondents : Shri V.Ravi Kiran Rao

31st July, 2007

-

Per G.S.SINGHVI, C.J.

Whether the enquiry being conducted by the Andhra Pradesh State Human Rights Commission (for short, 'the State Commission') into the complaint of human rights violation lodged by respondent No.2 falls within the prohibition stipulated in Section 36 of the Protection of Human Rights Act, 1993 (for short, 'the Act') is the question which arises for determination in this petition filed by Sri S.V. Gopala Krishna for quashing notification dated 5-2-2007 issued by the State Commission.

The petitioner joined service as Sub-Inspector of Police in 1989. He was promoted as Circle Inspector in 2003. While he was posted at Yemmiganur Town Police Station, the petitioner and his colleague Sri Maheswara Reddy (Sub-Inspector of Police) are said to have illegally detained two boys namely, J. Naganna and J. Eranna belonging to Scheduled Tribe, both residents of Yemmiganur from January 5, 2005 to January 15, 2005, tortured them and demanded bribe for producing them before the court. Sri B. Purushotham Reddy, Advocate (respondent No.2), the then President, Andhra Pradesh High Court Advocates Association, filed a complaint before the State Commission on 25-8-2005 about the illegal detention and torture of the Scheduled Tribe boys. On that very day, the State Commission took cognizance of the complaint and decided to make enquiry by observing that the allegations are of serious nature. For the sake of reference, order dated 25-8-2005 passed by the State Commission is reproduced below:

"Sri B. Purushothama Reddy, President, High Court Bar

Association, Hyderabd, sent a representation dated 25-8-2005 stating that two young ST boys are being harassed and humiliated by two Police Officers in Yemmiganur Town, Kurnool District. It is further reported that they have not only kept these two ST boys in illegal custody for about 10 days but also collected bribe for sending them to the judicial remand.

We take this case for enquiry, as the allegations are of serious nature clearly pointing out the irregularities of Police Officers in Yemmiganur Town by not following the guidelines issued by the Supreme Court of India, in D.K. Basu vs. State of West Bengal.

Call for Report from the Dy. Inspector General of Police (Rayalaseema Region), Kurnool, who will submit his report within two weeks of time from today."

In compliance of the direction given by the State Commission, Deputy Inspector General of Police, Rayalaseema Region submitted report some time in the month of September, 2005. On 27-9-2005, the State Commission posted the matter for consideration on 3-11-2005, on which date, a direction was given to send the copy of the report to respondent No.2 for comments, if any by 12-12-2005. On the next date of hearing, two advocates namely, S/Sri K. Uday Kumar and Y. Sanjay Reddy filed vakalat on behalf of respondent No.2 and sought adjournment to submit comments on the report of the Deputy Inspector General of Police. After considering the complaint, two contradictory reports submitted by the police authorities and the comments of respondent No.2, the State Commission passed order dated 1-3-2006, which reads as under:

"After perusing the complaint and the report sent by the Superintendent of Police, Kurnool dt.31-8-2005 and the comments of the petitioner and the accompanying report of the Addl. Director General of Police, CID, dt.27-8-2005 which run contrary to the earlier report of the Superintendent of Police, this Commission is of the considered view that an enquiry by the Commission may be necessary.

Sri E. Ismail, learned Member of this Commission is requested to go over to Yemmiganur and make an enquiry after issuing

necessary notices to the concerned, by fixing a suitable date.

Secretary of the Commission is directed to take steps accordingly."

In furtherance of the aforementioned order, the Secretary of the Commission issued notification dated 5-2-2007 for holding an enquiry by Sri E. Ismail (Member of the State Commission) on 24-2-2007 at Yemmiganur (R&B Guest House). A list of the witnesses to be examined was enclosed with the notification.

The petitioner has questioned the notification issued by the State Commission mainly on the ground that the enquiry is barred by Section 36(2) of the Act. The other plea taken by the petitioner is that in view of the prohibition contained in Section 36(1), the State Commission cannot enquire into the matter because a similar complaint is pending before the Andhra Pradesh State Scheduled Castes and Scheduled Tribes Commission and Writ Petition No.2646 of 2006 filed by J. Naganna for issue of a mandamus to the authorities of the police department to hold departmental enquiry was dismissed by the learned Single Judge on 2-1-2007.

In the counter filed on behalf of the State Commission by its Secretary, Sri P. Vishwanath, reference has been made to orders dated 25-8-2005 and 1-3-2006 passed by the State Commission, and it has been averred that the enquiry being conducted by Sri E. Ismail is not barred by Section 36 of the Act. According to Sri P. Vishwanath, the enquiry was started on 25-8-2005 i.e. the date on which cognizance was taken by the State Commission and, therefore, the same cannot be treated as having been initiated beyond one year.

Respondent No.2 has also filed written statement on similar lines.

Sri O. Manohar Reddy relied on Sections 17 and 36 of the Act

and argued that notification dated 5-2-2007 is liable to be quashed because the State Commission does not have the jurisdiction to hold enquiry after expiry of the one year from the date of the alleged violation of human rights. He submitted that the act constituting violation of human rights was allegedly committed by the petitioner and Sri Maheswara Reddy in January, 2005 and as the notification for holding enquiry has been issued beyond one year, the same should be declared as barred by

Section 36(2) of the Act. Learned counsel then argued that the direction given by the State Commission on 25-8-2005 cannot be treated as a part of enquiry within the meaning of Section 17(ii) read with Section 36(2) and, therefore, notification dated 5-2-2007 is liable to be nullified. Sri Reddy further argued that in view of the prohibition contained in Section 36(1), the State Commission cannot make enquiry into complaint dated 25-8-2005 because a similar complaint is pending before the Andhra Pradesh State Scheduled Castes and Scheduled Tribes Commission.

Sri V. Ravikiran Rao argued that notification dated 5-2-2007 cannot be declared as barred by Section 36(2) because the State Commission had not only taken cognizance of the complaint of respondent No.2 on 25-8-2005 itself, but also ordered enquiry into the allegations of violation of human rights contained therein. Learned counsel submitted that order dated 25-8-2005 passed by the State Commission falls within the ambit of Section 17(ii) and, therefore, the enquiry being conducted in furtherance of that order cannot be stultified by invoking Section 36(2) of the Act. Sri Ravikiran Rao further argued that the bar contained in Section 36(1) is applicable only qua the enquiries being conducted by the National Commission and not the State Commission and notification dated 5-2-

2007 cannot be quashed on the ground that a complaint similar to the one lodged by respondent No.2 is pending before the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes Commission.

We have given serious thought to the respective arguments/submissions. Sections 2(c), (n), 17, 29 and 36 of the Act, which have bearing on this case, read as under:

> "**2. Definitions**
> (c) "Commission" means the National Human Rights Commission constituted under Section 3;
> (n) "State Commission" means a State Human Rights Commission constituted under Section 21.
> **17. Inquiry into complaints.-**The Commission while inquiring into the complaints of violations of human rights may-
> (i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:
> Provided that
> (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
> (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
> (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.
> **29. Application of certain provisions relating to National Human Rights Commission to State Commission.-**The provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-
> (a) references to "Commission" shall be construed as references to "State Commission";
> (b) in Section 10, in sub-section (3), for the word "Secretary-General", the word "Secretary" shall be substituted,
> (c) in Section 12, clause (f) shall be omitted',

(d) in Section 17, in clause (i), the words "Central Government or any" shall be omitted.

36. Matters not subject to jurisdiction of the Commission.-(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

A conjoint reading of Sections 17 and 29 makes it clear that while making enquiry into the complaints of violations of human rights, the State Commission can call for the opinion or report from the Central Government or the State Government or any authority subordinate to these governments. The State Commission can simultaneously or otherwise initiate enquiry into the complaint of violations of human rights. The bar contained in Section 36(2) is attracted only if the enquiry is initiated by the State Commission after the expiry of one year from the date on which the act constituting violation of human rights is said to have been committed.

The facts of the case before us show that the Commission had, on 25-8-2005, after taking cognizance of the seriousness of the allegations contained in the complaint lodged by respondent No.2, decided to hold enquiry. That order clearly falls within the ambit of Section 17(ii) of the Act. Therefore, the enquiry being conducted by the State Commission cannot be treated as barred by Section 36(2) and notification dated 5-2-2007 issued by the Secretary of the State Commission cannot be quashed.

The prohibition contained in Section 36(1) is also not attracted in the present case because the word 'Commission' appearing in that section is referable to the definition of the National Commission under Section 2(c) and not the State Commission. Even otherwise, the plain

language of Section 36(1) makes it clear that the National Commission is precluded from making enquiry in any matter which is pending before a State Commission or any other Commission duly constituted under a law enacted by the competent legislature. If the Parliament wanted to preclude the State Commission from making inquiry into the matters pending before other Commissions, then it would not have used the phrase 'State Commission' in Section 36(1). The legislative intendment becomes more prominent from the language of Section 36(2), which contains the prohibition against the holding of enquiry by the National Commission as well the State Commission after expiry of one year from the date on which the act constituting violation of human rights is said to have been committed.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.4534 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

31st July, 2007

C.V.NAGARJUNA REDDY, J.

ARS